

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 914

Short Title: Public Safety/Gun Transfer/Background Check. (Public)

Sponsors: Representatives Earle, D. Hall, and Michaux (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 15, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE GREATER PROTECTION FOR THE PUBLIC BY REQUIRING
3 THAT A BACKGROUND CHECK AND PERMIT BE OBTAINED PRIOR TO THE
4 TRANSFER OF A FIREARM UNLESS THE TRANSFER IS BETWEEN IMMEDIATE
5 FAMILY MEMBERS, TO PROVIDE THAT THE SHERIFF MAY REVOKE A PERMIT
6 IN CERTAIN CIRCUMSTANCES, AND TO STRENGTHEN THE LAW REQUIRING
7 SAFE STORAGE OF A FIREARM TO PROTECT MINORS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 52A of Chapter 14 of the General Statutes reads as rewritten:

10 "Article 52A.

11 "~~Sale of Weapons in Certain Counties.~~ Transfer of Firearms.

12 "**§ 14-402. ~~Sale of certain weapons~~ Transfer or receipt of firearms without permit**
13 **forbidden.**

14 (a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or
15 transfer, or to purchase or receive, at any place within this State from any other place within or
16 without the State any ~~pistol~~ firearm unless: (i) a license or permit is first obtained under this
17 Article by the purchaser or receiver from the sheriff of the county in which the purchaser or
18 receiver resides; or (ii) a valid North Carolina concealed handgun permit is held under Article
19 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time
20 of the purchase.

21 It is unlawful for any person or persons to receive from any postmaster, postal clerk,
22 employee in the parcel post department, rural mail carrier, express agent or employee, railroad
23 agent or employee within the State of North Carolina any ~~pistol~~ firearm without having in his
24 or their possession and without exhibiting at the time of the delivery of the same and to the
25 person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person
26 violating the provisions of this section is guilty of a Class 2 misdemeanor.

27 (b) This section does not apply to an antique firearm or an historic edged weapon.

28 (b1) This section does not apply when the transfer or receipt of a firearm is between
29 immediate family members.

30 (c) The following definitions apply in this Article:

31 (1) Antique firearm. – Defined in G.S. 14-409.11.

32 (2), (3) Repealed by Session Laws 2011-56, s. 1, effective April 28, 2011.

33 (3a) Firearm. – A handgun, shotgun, rifle, or other weapon of any description
34 from which any shot, bullet, or other missile can be discharged.

35 (4) Historic edged weapon. – Defined in G.S. 14-409.12.



(5) through (7) Repealed by Session Laws 2011-56, s. 1, effective April 28, 2011.

(6) Immediate family member. – A spouse, child, sibling, parent, grandparent, or grandchild or the spouse of an immediate family member. This term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"§ 14-403. Permit issued by sheriff; form of permit; expiration of permit.

The sheriffs of any and all counties of this State shall issue to any person, firm, or corporation in any county a license or permit to purchase or receive any weapon mentioned in this Article from any person, firm, or corporation offering to sell or dispose of the weapon. The license or permit shall expire ~~five years~~ three years from the date of issuance. The license or permit shall be in the following form:

North Carolina,

_____ County.

I, _____, Sheriff of said County, do hereby certify that I have conducted a criminal background check of the applicant, _____ whose place of residence is _____ in _____ (or) in _____ Township, _____ County, North Carolina, and have received no information to indicate that it would be a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a ~~handgun~~ firearm. The applicant has further satisfied me as to his, her (or) their good moral character. Therefore, a license or permit is issued to _____ to purchase one ~~pistol~~ firearm from any person, firm or corporation authorized to dispose of the same.

This license or permit expires ~~five years~~ three years from its date of issuance.

This ____ day of _____, _____.

Sheriff.

"§ 14-404. Issuance or refusal of permit; appeal from refusal; grounds for refusal; sheriff's fee.

(a) Upon application, the sheriff shall issue the license or permit to a resident of that county, unless the purpose of the permit is for collecting, in which case a sheriff can issue a permit to a nonresident, when the sheriff has done all of the following:

- (1) Verified, before the issuance of a permit, by a criminal history background investigation that it is not a violation of State or federal law for the applicant to purchase, transfer, receive, or possess a ~~handgun~~ firearm. The sheriff shall determine the criminal and background history of any applicant by accessing computerized criminal history records as maintained by the State Bureau of Investigation and the Federal Bureau of Investigation, by conducting a national criminal history records check, by conducting a check through the National Instant Criminal Background Check System (NICS), and by conducting a criminal history check through the Administrative Office of the Courts.
- (2) Fully satisfied himself or herself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant.
- (3) Fully satisfied himself or herself that the applicant desires the possession of the ~~weapon mentioned~~ firearm for (i) the protection of the home, business, person, family or property, (ii) target shooting, (iii) collecting, or (iv) hunting.

(b) If the sheriff is not fully satisfied, the sheriff may, for good cause shown, decline to issue the license or permit and shall provide to the applicant within seven days of the refusal a written statement of the reason(s) for the refusal. An appeal from the refusal shall lie by way of petition to the chief judge of the district court for the district in which the application was filed.

1 The determination by the court, on appeal, shall be upon the facts, the law, and the
2 reasonableness of the sheriff's refusal, and shall be final.

3 (c) A permit may not be issued to the following persons:

- 4 (1) One who is under an indictment or information for or has been convicted in
5 any state, or in any court of the United States, of a felony (other than an
6 offense pertaining to antitrust violations, unfair trade practices, or restraints
7 of trade). However, a person who has been convicted of a felony in a court
8 of any state or in a court of the United States and (i) who is later pardoned,
9 or (ii) whose firearms rights have been restored pursuant to G.S. 14-415.4,
10 may obtain a permit, if the purchase or receipt of a ~~pistol~~ firearm permitted
11 in this Article does not violate a condition of the pardon or restoration of
12 firearms rights.
- 13 (2) One who is a fugitive from justice.
- 14 (3) One who is an unlawful user of or addicted to marijuana or any depressant,
15 stimulant, or narcotic drug (as defined in 21 U.S.C. § 802).
- 16 (4) One who has been adjudicated mentally incompetent or has been committed
17 to any mental institution.
- 18 (5) One who is an alien illegally or unlawfully in the United States.
- 19 (6) One who has been discharged from the Armed Forces of the United States
20 under dishonorable conditions.
- 21 (7) One who, having been a citizen of the United States, has renounced his or
22 her citizenship.
- 23 (8) One who is subject to a court order that:
- 24 a. Was issued after a hearing of which the person received actual
25 notice, and at which the person had an opportunity to participate;
- 26 b. Restrains the person from harassing, stalking, or threatening an
27 intimate partner of the person or child of the intimate partner of the
28 person, or engaging in other conduct that would place an intimate
29 partner in reasonable fear of bodily injury to the partner or child; and
- 30 c. Includes a finding that the person represents a credible threat to the
31 physical safety of the intimate partner or child; or by its terms
32 explicitly prohibits the use, attempted use, or threatened use of
33 physical force against the intimate partner or child that would
34 reasonably be expected to cause bodily injury.

35 (d) Nothing in this Article shall apply to officers authorized by law to carry firearms if
36 the officers identify themselves to the vendor or donor as being officers authorized by law to
37 carry firearms and provide any of the following:

- 38 (1) A letter signed by the officer's supervisor or superior officer stating that the
39 officer is authorized by law to carry a firearm.
- 40 (2) A current photographic identification card issued by the officer's employer.
- 41 (3) A current photographic identification card issued by a State agency that
42 identifies the individual as a law enforcement officer certified by the State of
43 North Carolina.
- 44 (4) A current identification card issued by the officer's employer and another
45 form of current photographic identification.

46 (e) The sheriff shall charge for the sheriff's services upon issuing the license or permit a
47 fee of ~~five dollars (\$5.00)~~ twenty-five dollars (\$25.00).

48 (f) Each applicant for a license or permit shall be informed by the sheriff within 30
49 days of the date of the application whether the license or permit will be granted or denied and,
50 if granted, the license or permit shall be immediately issued to the applicant.

1 (g) An applicant shall not be ineligible to receive a permit under subdivision (c)(4) of
2 this section because of involuntary commitment to mental health services if the individual's
3 rights have been restored under G.S. 122C-54.1.

4 **"§ 14-405. Record of permits kept by sheriff.**

5 The sheriff shall keep a book, to be provided by the board of commissioners of each county,
6 in which he shall keep a record of all licenses or permits issued under this article, including the
7 name, date, place of residence, age, former place of residence, etc., of each such person, firm,
8 or corporation to whom or which a license or permit is issued.

9 **"§ 14-405.1. Revocation of permit.**

10 (a) The sheriff of the county where the permit was issued or the sheriff of the county
11 where the person resides may revoke a permit subsequent to a hearing for any of the following
12 reasons:

- 13 (1) Fraud or intentional and material misrepresentation in the obtaining of a
14 permit.
- 15 (2) Misuse of a permit, including selling or giving a permit to another person.
- 16 (3) The doing of an act or existence of a condition which would have been
17 grounds for the denial of the permit by the sheriff.
- 18 (4) The violation of any of the terms of this Article.
- 19 (5) The applicant is adjudicated guilty of or receives a prayer for judgment
20 continued for a crime which would have disqualified the applicant from
21 initially receiving a permit.

22 (b) A permittee may appeal the revocation of a permit by petitioning the chief judge of
23 the district court for the district in which the permit was issued or in which the permittee
24 resides. The determination by the court, on appeal, shall be upon the facts, the law, and the
25 reasonableness of the sheriff's revocation and shall be final.

26 **"§ 14-406. Dealer to keep record of sales.**

27 (a) ~~Every dealer in pistols and other weapons mentioned in this Article~~ firearms shall
28 keep an accurate record of all sales thereof, including the name, place of residence, date of sale,
29 etc., of each person, firm, or corporation to whom or which such sales are made, which record
30 shall be open to the inspection of any duly constituted State, county or police officer, within
31 this State.

32 (b) Repealed by Session Laws 2011-56, s. 3, effective April 28, 2011.

33 **"§ 14-406.2. Record of private transfers.**

34 Any person who transfers a firearm (transferor) shall keep an accurate record of the
35 transaction, including the name, place of residence, date of sale, etc., of each person, firm, or
36 corporation to whom or which the transfer is made. The person or entity receiving the firearm
37 shall give the permit obtained from the sheriff pursuant to this Article to the transferor, and the
38 transferor shall retain the permit as part of the record of the transaction.

39 **"§ 14-407.1. Sale of blank cartridge ~~pistols,~~ firearms.**

40 The provisions of G.S. 14-402, 14-405, and 14-406 shall apply to the sale of ~~pistols~~
41 firearms suitable for firing blank cartridges. The sheriffs of all the counties of this State are
42 authorized and may in their discretion issue to any person, firm or corporation, in any such
43 county, a license or permit to purchase or receive any ~~pistol~~ firearm suitable for firing blank
44 cartridges from any person, firm or corporation offering to sell or dispose of the same, which
45 said permit shall be in substantially the following form:

46 North Carolina

47 _____ County

48 I, _____, Clerk of the Superior Court of said county, do hereby certify that
49 _____, whose place of residence is _____ Street in _____ (or)
50 in _____ Township in _____ County, North Carolina, having this day
51 satisfied me that the possession of a ~~pistol~~ firearm suitable for firing blank cartridges will be

1 used only for lawful purposes, a permit is therefore given said _____ to purchase
2 ~~said pistol~~ the firearm from any person, firm or corporation authorized to dispose of the same,
3 this _____ day of _____, _____.

4 _____
5 Sheriff

6 The sheriff shall charge for the sheriff's services, upon issuing such permit, a fee of fifty
7 cents (50¢).

8 **"§ 14-408. Violation of § 14-406 a misdemeanor.**

9 Any person, firm, or corporation violating any of the provisions of G.S. 14-406 shall be
10 guilty of a Class 2 misdemeanor.

11 **"§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false
12 information regarding legality of firearm or ammunition transfer.**

13 (a) The following definitions apply in this section:

- 14 (1) Ammunition. – Any cartridge, shell, or projectile designed for use in a
15 firearm.
16 (2) ~~Firearm. – A handgun, shotgun, or rifle which expels a projectile by action
17 of an explosion~~
18 (3) Handgun. – A pistol, revolver, or other gun that has a short stock and is
19 designed to be held and fired by the use of a single hand.
20 (4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to
21 engage in the business of dealing in firearms.
22 (5) Materially false information. – Information that portrays an illegal
23 transaction as legal or a legal transaction as illegal.
24 (6) Private seller. – A person who sells or offers for sale any firearm, as defined
25 in G.S. 14-409.39, or ammunition.

26 (b) Any person who knowingly solicits, persuades, encourages, or entices a licensed
27 dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under
28 circumstances that the person knows would violate the laws of this State or the United States is
29 guilty of a Class F felony.

30 (c) Any person who provides to a licensed dealer or private seller of firearms or
31 ammunition information that the person knows to be materially false information with the
32 intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition
33 is guilty of a Class F felony.

34 (d) Any person who willfully procures another to engage in conduct prohibited by this
35 section shall be held accountable as a principal.

36 (e) This section does not apply to a law enforcement officer acting in his or her official
37 capacity or to a person acting at the direction of the law enforcement officer.

38 **"§ 14-409. Machine guns and other like weapons.**

39 (a) As used in this section, "machine gun" or "submachine gun" means any weapon
40 which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than
41 one shot, without manual reloading, by a single function of the trigger. The term shall also
42 include the frame or receiver of any such weapon, any combination of parts designed and
43 intended for use in converting a weapon into a machine gun, and any combination of parts from
44 which a machine gun can be assembled if such parts are in the possession or under the control
45 of a person.

46 (b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give
47 away, dispose of, use or possess machine guns, submachine guns, or other like weapons as
48 defined by subsection (a) of this section: Provided, however, that this subsection shall not apply
49 to the following:

50 Banks, merchants, and recognized business establishments for use in their respective places
51 of business, who shall first apply to and receive from the sheriff of the county in which said

1 business is located, a permit to possess the said weapons for the purpose of defending the said
2 business; officers and soldiers of the United States Army, when in discharge of their official
3 duties, officers and soldiers of the militia when called into actual service, officers of the State,
4 or of any county, city or town, charged with the execution of the laws of the State, when acting
5 in the discharge of their official duties; the manufacture, use or possession of such weapons for
6 scientific or experimental purposes when such manufacture, use or possession is lawful under
7 federal laws and the weapon is registered with a federal agency, and when a permit to
8 manufacture, use or possess the weapon is issued by the sheriff of the county in which the
9 weapon is located; a person who lawfully possesses or owns a weapon as defined by
10 Subsection (a) of this section in compliance with 26 U.S.C. Chapter 53, §§ 5801-5871. Nothing
11 in this subdivision shall limit the discretion of the sheriff in executing the paperwork required
12 by the United States Bureau of Alcohol, Tobacco and Firearms for such person to obtain the
13 weapon. Provided, further, that any bona fide resident of this State who now owns a machine
14 gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property
15 without violating the provisions of this section upon his reporting said ownership to the sheriff
16 of the county in which said person lives.

17 (c) Any person violating any of the provisions of this section shall be guilty of a Class I
18 felony."

19 **SECTION 2.** G.S. 14-315.1 reads as rewritten:

20 "**§ 14-315.1. Storage of firearms to protect minors.**

21 (a) Any person who resides in the same premises as a minor, owns or possesses a
22 firearm, and ~~stores or leaves the firearm (i) in a condition that the firearm can be discharged~~
23 ~~and (ii) in a manner that the person knew or should have known that an unsupervised minor~~
24 ~~would be able to gain access to the firearm,~~ leaves the firearm out of the person's immediate
25 possession or control without having first securely locked the firearm in an appropriate safe
26 storage depository or rendered it incapable of being fired by the use of a safety locking device
27 appropriate to that firearm is guilty of a Class 1 misdemeanor if a minor gains access to the
28 firearm without the lawful permission of the minor's parents or a person having charge of the
29 minor and the minor:

30 (1) Possesses it in violation of G.S. 14-269.2(b);

31 (2) Exhibits it in a public place in a careless, angry, or threatening manner;

32 (3) Causes personal injury or death with it not in self defense; or

33 (4) Uses it in the commission of a crime.

34 (b) Nothing in this section shall prohibit a person from carrying a firearm on his or her
35 body, or placed in such close proximity that it can be used as easily and quickly as if carried on
36 the body.

37 (c) This section shall not apply if the minor obtained the firearm as a result of an
38 unlawful entry by any person.

39 (d) "Minor" as used in this section means a person under 18 years of age who is not
40 emancipated."

41 **SECTION 3.** G.S. 14-315.2(b) reads as rewritten:

42 "(b) Any retail or wholesale store, shop, or sales outlet that sells firearms shall
43 conspicuously post at each purchase counter the following warning in block letters not less than
44 one inch in height the phrase: ~~"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM~~
45 ~~THAT CAN BE DISCHARGED IN A MANNER THAT A REASONABLE PERSON~~
46 ~~SHOULD KNOW IS ACCESSIBLE TO A MINOR. IT IS UNLAWFUL FOR A PERSON~~
47 WHO RESIDES WITH A MINOR TO LEAVE A FIREARM OUT OF A PERSON'S
48 IMMEDIATE POSSESSION OR CONTROL WITHOUT FIRST HAVING SECURELY
49 LOCKED THE FIREARM IN A STORAGE DEPOSITORY OR RENDERED IT
50 INCAPABLE OF BEING FIRED."

1 **SECTION 4.** This act becomes effective December 1, 2013, and applies to any
2 transfer or receipt of a firearm occurring on or after that date. Any permit issued prior to
3 December 1, 2013, shall remain valid until the date that is five years from the date the permit
4 was issued and may be used for the transfer of a pistol or other firearm pursuant to this act.